**NEW MEXICO**
**ENVIRONMENT DEPARTMENT**

***Surface Water Quality Bureau***

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**Original via UPS -- Copy via Electronic Mail**

September 13, 2013

Mr. William K. Honker, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

**Re: State Certification**

Dear Mr. Honker:

Enclosed, please find the state certification for the following proposed National Pollutant Discharge Elimination System (NPDES) permit:

**Middle Rio Grande Watershed Based Municipal Separate Storm Sewer System (MS4) – NM04A0000**

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, sections 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978) and complies with state Water Quality Standards [*State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC)*], the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 NMAC), USEPA jointly with the New Mexico Environment Department (NMED) issued a public notice of the draft permit and announced a public comment period posted on the NMED web site www.nmenv.state.nm.us/swqb/WQA/Notice on May 1, 2013. The public comment period ended on July 1, 2013. NMED received no comments by the end of the comment period.

Sincerely,

James Hogan, Bureau Chief
Surface Water Quality Bureau

cc: (w/enclosures)

Ms. Diane Smith, USEPA (6WQ-NP) via e-mail
Mr. Brent Larsen, USEPA (6WQ-PP) via e-mail
Mayor Richard Berry, City of Albuquerque, via email
Mr. Jerry Lovato, Executive Engineer, AMAFCA, via email
Mr. Timothy L. Parker, District 3 Engineer, NMDOT, via email
Mr. Robert G. Frank, President, UNM, via email
Mr. Tom Zdunek, County Manager, Bernalillo County, via email
Mr. Phillip Rios, County Manager, Sandoval County, via email
Mayor Phil Gasteyer, Village of Corrales, via email
Mr. Keith Reisberg, City Manager, City of Rio Rancho, via email
Mr. Kelly Ward, Village Administrator, Village of Los Ranchos de Albuquerque, via email
Major General Sandra E. Finan, Commander, Kirtland Air Force Base, via email
Mayor Jack Torres, Town of Bernalillo, via email
Mr. Dan Mourning, General Manager, EXPO NM, via email
Mr. Charles Thomas, Executive Engineer, SSCAFCA, via email
Mr. Sal Reyes, Chairman, ESCAFCA, via email
Mr. Geoffrey Beausoleil, Manager, Sandia Field Office, via email
Mr. Michael Hazen, Vice President, Sandia National Laboratories, via email
Governor Victor Montoya, Pueblo of Sandia, 481 Sandia Loop, Bernalillo, NM 87004
Governor Eddie Paul Torres, Sr., Pueblo of Isleta, P.O. Box 1270, Isleta Pueblo, NM 87022
Governor Myron Armijo, Pueblo of Santa Ana, 2 Dove Road, Bernalillo, NM 87004

Mr. Ron Curry, Regional Administrator
Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

Date: September 13, 2013

STATE CERTIFICATION

Re: Middle Rio Grande Watershed Based MS4 Permit NPDES Permit No. NM04A0000

Dear Mr. Curry,

The New Mexico Environment Department has examined the proposed NPDES permit above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

( ) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law.

(x) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit.

( ) denies certification for the reasons stated in the attachment.

( ) waives its right to certify.

In order to meet the requirements of State law, including water quality standards and appropriate basin plans as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact me at (505) 476-3671, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

James Hogan, Chief
Surface Water Quality Bureau

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**Conditions of Certification**

The following revisions are necessary to ensure that discharges allowed under the NPDES permit protect State water quality standards adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [Chapter 74, Article 6 NMSA 1978]. State water quality standards are published in the document entitled *Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 NMAC (As amended through April 30, 2012)* (WQS).

USEPA regulations at 40 CFR 122.44(d)(1)(i) require that NPDES permit

*[l]imitations must control all pollutants or pollutant parameters ... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard ...*

And the regulations also state at 40 CFR §124.53(e)(2):

*State certification shall be in writing and shall include:*
*(2) When the State certifies a draft permit instead of a permit application, any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition.*

NMED is conditioning this certification based on State law and the federal Clean Water Act to ensure that compliance with this permit protects designated uses in the middle Rio Grande.

**Condition #1:**
Temperature is limited in the Standards for Interstate and Intrastate Surface Waters in segments 20.6.4.105 and 20.6.4.106 NMAC for the designated use of marginal warmwater aquatic life at a maximum of 32.2° C. As noted in the 2012-2014 303(d) list, the Middle Rio Grande in segment 20.6.4.105 NMAC (specifically at the Isleta Pueblo to Alameda Bridge Assessment Unit) is impaired for the temperature water quality standard, which contributes to the non-attainment of the marginal warmwater aquatic life use. To NMED's knowledge the EPA did not perform a reasonable potential analysis to ensure that discharges authorized under this permit will not cause or contribute to this documented impairment. Therefore New Mexico requires that temperature monitoring be included in the NPDES MS4 Watershed Based Permit at Part III.A.1 and Part III.A.2 in order to ensure compliance with New Mexico Water Quality Standards. This condition is also consistent with the New Mexico Implementation Guidance which states in Appendix C that if a waterbody is impaired, a limit must be drafted in accordance with the Water Quality Management Plan (WQMP). NMED notes that a TMDL for temperature in the middle Rio Grande is currently scheduled for 2016.

**Comments that are not Conditions of Certification**

1. NMED's 2010 Total Maximum Daily Load for *E. coli* assigned a waste load allocation (WLA) in aggregate form in two assessment units of the Middle Rio Grande in the Albuquerque area. This aggregate calculation covers all Phase I and Phase II permittees in both segments.

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In the proposed permit in Part I.C.2.b (i) (c) B, it provides that the permittees are allowed "in consultation with/and the approval of NMED, to determine an alternative sub-measurable goal derived from the WLA for the pollutant(s) of concern for their respective MS4."

Language has been placed in the draft permit in Appendix B that uses tables and formula taken from the *E. coli* TMDL for the two Albuquerque stream segments of the Rio Grande. NMED recommends the following language be inserted in place of this language. We believe our proposed language will provide clarity on TMDL loading calculations and ease of understanding the process of setting alternative goals for the permittees and the public.

"If an individual permittee or a group of permittees seeks an alternative sub-measureable goal NMED will review and approve these requests as part of the SWMP; however NMED requests that preliminary proposals be submitted with the Notice of Intent (NOI) according to the due dates specified in the permit. This proposal shall include, **but is not limited to**, the following items:

**I. Determine base loading for subwatershed areas consistent with TMDL**

a. Using the table below, the permittee must develop a target load consistent with the TMDL for any sampling point in the watershed (even if it includes area outside the jurisdictional area of the permit).

*E. coli* loading on a per area basis (cfu/sq mi/day)

| | high | moist | mid | dry | low |
|---|---|---|---|---|---|
| Alameda to Isleta | 1.79E+09 | 4.48E+08 | 3.02E+08 | 1.11E+08 | 2.58E+07 |
| Angostura to Alameda | 3.25E+09 | 9.41E+08 | 5.19E+08 | 3.37E+08 | 1.74E+08 |

b. An estimation of the pertinent, subwatershed area that the permittee is responsible for and the basis for determining that area, including the means for excluding any tributary inholdings;

c. Using the total loading for the watershed (from part a) and the percentage of the watershed area that is part of the permitee(s) jurisdiction (part b) to calculate a base WLA for this subwatershed.

**II. Set Alternative subwatershed targets**

a. Permittee(s) may reallocate WLA within and between subwatershed based on factors including:

- Population density within the pertinent watershed area;
- Slope of the waterway;
- Percent impervious surface and how that value was determined;
- Stormwater treatment, installation of green infrastructure for the control or treatment of stormwater and stormwater pollution prevention and education programs within specific watersheds

b. A proposal for an alternative subwatershed target must include the rationale for the factor(s) used

**III. Ensure overall compliance with TMDL WLA allocation**

a. The permitee(s) will provide calculations demonstrating the total WLA under the alternative proposed in (Part II) is consistent with the baseline calculated in (Part I) based on their total jurisdictional area. Permittee(s) will not be allowed to allocate more area within the watershed than is accorded to them under their jurisdictional area. For permittees that work cooperatively, WLA calculations may be combined and used where needed within the sub-watershed amongst the cooperating parties.

WLA calculations must be sent as part of the Notice of Intent, and must be sent to:

Sarah Holcomb
Industrial and Stormwater Team Leader
NMED Surface Water Quality Bureau
P.O. Box 5469,
Santa Fe, NM 87502

2. NMED notes that there is no discussion of waste load allocations or other *E. coli* related requirements assigned to the three tribal entities included under this permit. NMED must ensure that the State's water quality standards are protected and requests that EPA address the issue of NMED's *E. coli* TMDL downstream of all three tribal lands in conjunction with the requirements in 40 CFR §131.10(b). Although the TMDL does not include tribal lands in the jurisdictional area calculation, the calculations themselves are based on tribal standards, which are more protective than the State's. NMED suggests that a benchmark value based on the Sandia Pueblo water quality standard is placed in the permit for the tribal entities to ensure that their discharges do not violate downstream water quality requirements. A benchmark is not considered an enforceable numeric limit, but as in the Multi-Sector General Permit, it is used as an indication of the need to reevaluate and/or apply more appropriate Best Management Practices to control the discharge.

3. In the proposed permit at Part I.B.1.a, Table 1, deadlines are given for the submittal of permittees' NOIs. As currently written, for example, there is a requirement to submit an NOI by 90 days after permit issuance if working individually, or 180 days from permit issuance if working cooperatively with other jurisdictions for the Class A permittee type. There must be a requirement to submit notification by the initial 90 day deadline to indicate that a permittee is anticipating working cooperatively so that NMED staff can adjust workload to accommodate this schedule. NMED will accept notification via email to bruce.yurdin@state.nm.us AND sarah.holcomb@state.nm.us.

4. According to Part 5 of the *Procedures for Implementing National Pollutant Discharge Elimination System Permits in New Mexico*, dated March 15, 2012, that "All reports shall be sent concurrently to EPA and NMED. The addresses and phone numbers will be located in the permits."

   In numerous places in the fact sheet and permit documented in the following table, EPA references the fact that information *may* need to be submitted to the State. Per the Implementation Guidance, NMED requests that any report, notification or DMR submitted to EPA also be sent to NMED. The information shall be mailed to:

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Bruce Yurdin, Program Manager
NMED Surface Water Quality Bureau
Point Source Regulation Section
P.O. Box 5469
Santa Fe, NM 87502

| Locations where a report is required to be sent to EPA and NMED |
|---|
| Part I.A.6.b(iii)(f)---Notice of Termination |
| Part I.B.3----------Where to submit reports |
| Part I.C.1.d(iv)------Progress and annual reports |
| Part III.A.1----------Wet weather monitoring |

5. In the proposed permit fact sheet, page 15 of 78, EPA incorrectly states that the 90th percentile storm event for the City of Albuquerque was determined to be 0.35 inches. The study, conducted by Mr. Chuck Easterling of Easterling Consultants, LLC, actually determined that the 90th percentile event was 0.44 inches. A copy of the calculation is included as Appendix A to this certification letter.

6. In the proposed permit at Part I.A.4, Authorized Non-Stormwater Discharges, EPA states that uncontaminated pumped groundwater is an allowable non-stormwater discharge. NMED has responded to a number of unauthorized discharges from drinking water well facilities that have discharged their purge water to a Water of the United States as an unpermitted NPDES discharge. If excluded under this MS4 permit, those discharges that are currently occurring from groundwater purge operations may not be required to obtain NPDES permits in the future. EPA should carefully consider what impact this will have on future permitting needs. "Contaminated" and "Uncontaminated" should also be included in the definitions in Part VII.

7. In the proposed permit at Part I.A.6.a(i) under Obtaining Permit Coverage, it states that numerous items must be included in the Notice of Intent to prove eligibility for permit coverage. Among those items are information required at I.B.2 (General contents of NOI), I.A.3 (public participation and National Historic Preservation Act requirements), I.D.5.h(i) (local public notice documentation), and I.A.5.f (documentation of compliance with requirements of applicable TMDLs). There is, however, no requirement for documentation to ensure eligibility requirements under the Endangered Species Act are met. In Part I.C.3 of the permit, permittees are specifically required to address dissolved oxygen and sediment concerns, and this information shows a permittee's eligibility to qualify for permit coverage and NMED therefore suggests that this should be required to be submitted in the initial Notice of Intent.

8. In the proposed permit in Part I.C.2.b.(i)(d), EPA states that the annual report "must include an analysis of how the selected BMPs will be effective in contributing to achieving the measureable goal..." NMED questions whether EPA means "will be" or "have been" effective. In previous permits, there have been requirements for permittees to assess their impact on the receiving waters through analysis of pollutant loading. It does not appear that there is a requirement in this permit to do the same. EPA may want to clarify language here to indicate that information is needed on how the selected BMPs have been performing, not a projection of how they are anticipated to perform.

9. In the proposed permit in Part I.C.2.b.(ii)(a)A, EPA states, " Determine whether the MS4 may be a source of the pollutant(s) of concern by referring to the CWA §303(d) list and then determining if discharges from the MS4 would be likely to contain the pollutant(s) of concern at levels of concern." NMED is concerned that this language is vague, and may lead to arbitrary decisions as to whether the MS4 is a source of pollutants of concern. More specific language should be added here to indicate that this decision should be based on data collected from routine or illicit discharge monitoring previously conducted within the permittee's jurisdiction.

10. In the proposed permit, in Part I.C.2.b.(ii)(b) Impairment for Bacteria, EPA requires the permittee to identify potential pollutant sources and then develop and implement targeted BMPs to address the source. NMED has a formal notification process to identify probable sources as well, and would appreciate the information to be submitted on the following form: ftp://ftp.nmenv.state.nm.us/www/swqb/Surveys/PublicProbableSourceIDSurvey.pdf. This data may then be considered during the development of the 303(d) list.

11. In the proposed permit, in Part I.C.3.b.(h) (as currently written), NMED suggests that perhaps section (h) was meant to be subpart (vi).

12. In the proposed permit, in Part III.A.1 Wet Weather Monitoring, it should be clarified in the permit language that these monitoring requirements apply to **each** water of the US that runs in each entity's jurisdiction. From the current wording of the permit, there is nothing to indicate that these requirements apply to more than one waterbody.

13. In the proposed permit in Part III.A.1.g, EPA indicates that an alternative monitoring location can be substituted for just cause during the permit term, with EPA approval. As NMED is required to approve the permittee's monitoring plan under this permit NMED requests that the State also be involved in the determination of whether that new site is appropriate. NMED has experience with the permitted watershed to assess whether the new site is adequately chosen to capture the characteristics of that basin.

14. In the proposed permit in Part III.A.1.g, as the permit is currently written, the last sentence of the paragraph states that "Six (3) samples shall be collected during the first year of monitoring at substitute monitoring locations." NMED asks that EPA clarify whether three or six samples are required in this part. We also ask EPA to determine if this frequency of sampling is consistent with the approach to sampling specified in Part III. A.1.a (Option A) and Part III.A.1.b (Option B).

15. In the proposed permit in Part III.A.2.b, EPA states that during wet and dry weather discharge screening, a number of parameters are to be addressed, including pollutants that have been identified as the cause of an impairment of a waterbody receiving discharges from that portion of the MS4 (pollutants on the CWA 303(d) list).

    NMED's Human Health-Organism Only criterion for PCBs in the Standards for Interstate and Intrastate Water Quality at 20.6.4.900 NMAC is set at 0.00064 µg/L. Because there is an impairment for PCBs in the Rio Grande, NMED requires the use of EPA Method 1668 for compliance purposes since it is the only analytical method with a Method Detection Limit

(MDL) that is below NMED's water quality standard. Sampling conducted at the compliance points in this permit shall be conducted using EPA Method 1668 (latest revision), as is currently required at Part III.5.b. If a problem is indicated in the wet weather compliance tests, screening conducted further into the watershed is required to determine the source of the problem as per the permit language at Part III.A.1.h. NMED has allowed tests with higher method detection limits (MDLs) such as EPA Method 8082 (Aroclor method) or USGS Method 8093 for watershed screening purposes in the currently active Phase I MS4 permit issued to the City of Albuquerque, AMAFCA, NMDOT and UNM. NMED approves the continuation of this practice in the proposed MS4 Watershed Based Permit. However, if a source is identified using methods with higher detection levels, the use of EPA Method 1668 is required to provide confirmation and determination of the PCB levels and specific congeners at that location.

For dry weather screening purposes, the permittees can use EPA Method 8082 or USGS Method 8093 for screening purposes, but must use EPA Method 1668 (latest revision) for confirmation and determination of specific PCB levels at that location.

16. In the proposed permit in Appendix H, the standard list of MQLs for applicable test methods is given. In the list in the permit as written, there is no MQL given for PCBs. The MQL in the EPA Method 1668 latest revision test should be given in this list, still including the (**) footnote as currently written to indicate that a PCB test with higher detection limits can be used for screening purposes.

17. Generally, when EPA has included compliance timeframe tables, the deadlines are given as "x days from effective date of permit". Due to the fact that many permittees are anticipated to file NOIs under this permit, and the heavy workload this creates for EPA, it may take some time for approvals to be granted to a permittee. NMED recommends that to avoid the permittees potentially missing a deadline, the language should be modified to read instead: "x days from approval of permittee's NOI."

18. During the public meetings, an idea was suggested to allow different ways to monitor a regulated storm event. Due to the unique nature of rainfall frequency, intensity and location within the middle Rio Grande watershed, NMED suggests that once a monitoring location is selected in a permittee's monitoring program, a flow metering device should be placed at the outfall selected in the monitoring plan. This would be the most accurate way for a permittee to show that the storm resulted in a measureable storm event at the outfall that they are responsible for monitoring.

19. In Part III.A.1.a (i), the permit states that "Phase I permittees must include additional parameters from monitoring under permit NMS000101 whose mean values are at or above a water quality standard (WQS). For ease of implementation, NMED suggests that the specific constituents that exceeded WQS over the past 10 years should be culled out and specifically mentioned in this section. EPA may also want to review pesticide data to ensure that this will not be an issue in the new permit.

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# Appendix A: Albuquerque Area 90th Percentile Rain Event Calculation

## Albuquerque Precipitation Statistics 1891-2010

**Number of Events per Period**

| Period | Yrs of Record | Precipitation Range | | | | | |
|---|---|---|---|---|---|---|---|
| | | 0.1" | 0.25" | 0.5" | 0.75" | 1" | 1.5" |
| 1891-1910 | 20 | 414 | 192 | 67 | 29 | 16 | 3 |
| 1911-1930 | 20 | 504 | 233 | 70 | 19 | 11 | 4 |
| 1931-1940 | 10 | 0 | 225 | 0 | 0 | 7 | 0 |
| 1951-1970 | 20 | 443 | 0 | 62 | 0 | 10 | 0 |
| 1970-2010 | 40 | 79 | 532 | 291 | 102 | 34 | 18 |
| Totals | 110 | 1440 | 1182 | 490 | 150 | 78 | 25 |
| Percentages | | 42.79% | 35.13% | 14.56% | 4.46% | 2.32% | 0.74% |
| Accumulated | | 42.79% | 77.92% | 92.48% | 96.94% | 99.26% | 100.00% |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Events per Year | | 13.1 | 10.75 | 4.45 | 1.364 | 0.709 | 0.227 |
| Rainfall Volume | | 0.1 | 0.25 | 0.5 | 0.75 | 1 | 1.5 |